IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4588 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYABEN BHAILALBHAI PATEL

Versus

STAE OF GUJARAT

Appearance:

1. Special Civil Application No. 4588 of 2002

MS MAMTA R VYAS for Petitioner

MR DIPEN DESAI AGP for Respondent No. 1

MR SUNIL S JOSHI for Respondent No. 2

NOTICE SERVED for Respondent No. 3-5

MR PM DAVE for Respondent No. 6

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 13/08/2004

ORAL JUDGEMENT

Heard the learned advocates.

Rule returnable today. Learned AGP Mr. Desai and learned advocates Mr. Joshi & Mr. P.M Dave waive service of rule on behalf of the respective respondent.

The petitioner is the widow of one Bhailalbhai Patel. The said Shri Bhailalbhai Patel was a primary school teacher under the respondent no. 2. He died on 17th May, 2000 in harness. On the death of the said Shri Bhailalbhai Patel, the petitioner lodged claim for the provident fund and other retiral dues. It, however, appears that the respondent no.6 has claimed to be the `first wife' of the said Shri Bhailalbhai Patel and has lodged claim for the aforesaid dues of the deceased. The respondent no. 6 has also applied for Succession Certificate which has been converted into a civil suit. In view of the pending proceedings, the petitioner has not been paid the amount of provident fund and other amounts due and payable.

The petitioner has produced nomination made by the deceased-Shri Bhailalbhai Patel with respect to his provident fund. The deceased had, on 5th February, 1992, made nomination in favour of the present petitioner and had described her as his wife. In case of the petitioner predeceasing the said Shri Bhailalbhai Patel, the nomination was made in favour of one Gunvant Kumar B. Patel, the son of the deceased and the petitioner.

In view of the nomination made in favour of the petitioner, the payment of the amount of provident fund shall not be delayed on account of the pending suit. It shall be open for the respondent no. 6 to claim right to receive provident fund amount as the legally wedded wife of the deceased and on such declaration being given by the Civil Court, the amount of provident fund can be recovered from the present petitioner. As to the other benefits, the petitioner has not made specific averments. In absence of the specific claim made by the petitioner, no relief can be granted with respect to the other benefits.

In above view of the matter, the respondents authorities are directed to remit the amount of provident fund outstanding to the credit of the deceased Shri Bhailalbhai Patel alongwith the statutory interest accrued on such amount to the present petitioner within four weeks from today.

It is clarified that this order is not intended to settle the rival claims of the petitioner and the respondent no.6. The respondent no. 6 shall be at liberty to claim the provident fund amount from the petitioner before the Civil Court. The petitioner and the respondent no. 6 shall be at liberty to lodge their respective claims with respect to the other dues which may be payable. If such claim is lodged, the same shall be considered and decided in accordance with law.

Rule is made absolute in the above terms. The parties shall bear their own costs. The registry shall send the writ forthwith.

{Miss R.M Doshit, J.}

Prakash*